IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 27187-1-III**
ANN LYNN CHIPMAN,	)	
Respondent,	)	**Division Three**
and	)	
ROLAND LANCE CHIPMAN,	)	
Appellant.	)	**UNPUBLISHED OPINION**

Schultheis, C.J. — Roland Lance Chipman appeals the trial court's valuation and distribution of his multimillion dollar marital estate upon dissolution. He contends that the trial court failed to consider and credit him for his significant contributions of separate property to the community. He further contends that there is insufficient evidence to support the trial court's valuation of a particular asset that he was awarded. He asserts that the error was compounded by the trial court's failure to deduct from the asset's value the costs and taxes he would incur in the pending sale. Finally, he contends that the asset distribution is not fair and equitable, given the cumulative effect of these

errors. Ann Lynn Chipman refutes these challenges and requests attorney fees. We conclude that the trial court did not abuse its discretion in these matters and affirm. We deny Ms. Chipman's request for attorney fees.

FACTS

Ms. Chipman and Mr. Chipman lived together for around 15 months before they were married on November 9, 1991. The couple separated after about 15 years of marriage, on June 28, 2006. The matter went to trial on July 16-18, 2007. On December 4, 2007, the trial court submitted a memorandum opinion that constituted its findings. The decree of dissolution was entered on January 25, 2008. At the time of the decree, Ms. Chipman and Mr. Chipman were both 44 years old and their 15-year-old twin boys lived primarily with Ms. Chipman in Cashmere, Washington.

Ms. Chipman has a bachelor's degree in education. She had worked during the marriage as a counselor, substitute teacher, and a paraprofessional. At the time of trial, Ms. Chipman had a seasonal job as a full-time administrative assistant for the county fair, which would terminate in fall 2007. That position paid $12.30 per hour. She could earn between $8 per hour as a paraprofessional and $80 per day as a substitute teacher. Her income was supplemented by $500 from the operation of the couple's local mobile home park. Her gross monthly income at the time of trial was $2,177.59.

Mr. Chipman graduated from Cashmere High School in 1981. He then worked a

variety of hands-on jobs—in his parents' glass shop, as a self-employed carpenter, as an Alaskan fisherman, and in construction. In about 1986, Mr. Chipman bought a bulldozer and dump truck and started a construction business, Chipman Excavation.

At that time, Mr. Chipman was married to another woman and had two children. When that marriage was dissolved in 1988, Mr. Chipman was earning a net of $1,500 per month. He was awarded the family home and paid his former wife a $15,000 settlement. While married to Ms. Chipman, Mr. Chipman was granted custody of the two children from his former marriage, and he and Ms. Chipman raised them to adulthood.

Chipman Excavation was incorporated as Chipman Construction in 1992, after Mr. Chipman and Ms. Chipman married. Multiple other entities were formed by the parties through Chipman Construction for construction-related ventures and other business enterprises. The trial court noted a dispute in the value of the businesses and their assets, which was complicated by the way the businesses were managed. The "assets, accounts, receivables, and debts, are all co-mingled between the various businesses and between businesses and the parties personally." Clerk's Papers (CP) at 549. The couple's businesses included:

C&R Rentals. Formed in 2000, C&R held several trailer parks owned and operated by the couple as well as the Chipman Construction building.

Tri-State Fire. In 2002, after working several fire seasons, Mr. Chipman

developed fire suppression equipment, which was marketed through Tri-State Fire. Although initially very profitable, other companies began to make similar equipment, which, combined with slow seasons, sharply diminished Tri-State's profitability.

Apple Valley Concrete/Wenatchee Rock Products. In 2003, an orchard was purchased and ultimately converted into a gravel pit. In 2005, that enterprise spawned two companies: Wenatchee Rock Products, a gravel pit, and Apple Valley Concrete, a ready-mix concrete company.

Two Pines Trailer Park. In September 2005, Mr. Chipman went to New Orleans to explore business opportunities in the wake of Hurricane Katrina. Chipman Construction purchased a hurricane-battered trailer park and contracted with FEMA (Federal Emergency Management Agency) to lease the land for its temporary trailer housing, and to provide water, power, and sewer hookups. The lease brought in income of $51,200 per month. Mr. Chipman estimated that it cost at least $20,000 per month to maintain water, power, and sewer. Mr. Chipman testified that the FEMA leases were up for renewal in September 2007. He thought the leases would not be renewed.

Three Oaks and a Pine Trailer Park. In September 2006, Mr. Chipman used the resources of Chipman Construction and was paid a salary by it to restore another New Orleans trailer park. This venture, Three Oaks and a Pine, LLC, included a contract for future compensation of 25 percent of the monthly rental income after the first 18 months

of a FEMA lease on a 30-pad park at $850 per pad. Mr. Chipman would also receive 25 percent of the proceeds of the sale of the park, with consideration to the owner of the property of the value before restoration, which was deemed to be $475,000.

At trial, the parties presented evidence and testimony from accountants David Lemon and Jeffrey Neher. Each party submitted proposals for the division of property. Mr. Chipman submitted two proposals. One would have left Ms. Chipman a net award of $1,745,000 and Mr. Chipman just under $2.2 million. Mr. Chipman thought the distribution in his favor appropriate because he would be assuming most of the community debt (including the home awarded to Ms. Chipman), and he would have to sell properties to make a $250,000 lump sum equalization payment. The second option proposed having the properties held as tenants-in-common while selling community assets to pay off all community debt.

In the trial court's memorandum decision, it noted Mr. Chipman's main concern was that the asset-to-debt ratio would impact Chipman Construction's ability to obtain construction bonds and Mr. Chipman's ability to service the debt while making an equalization payment to Ms. Chipman. The court determined that the parties should not be bound together by property after the dissolution. Further,

> if [the parties] find it necessary as divorced spouses to sell property herein awarded to them, they should be able to do so without regard to the other spouse. Also, it is apparent to the Court based on the facts of this case and how Mr. and Mrs. Chipman have conducted their businesses, that even

> though there are significant assets to be divided, *it is impossible to eliminate the impact of this divorce on the financial foundation of each spouse*.

CP at 550 (emphasis added).

The court valued the net marital estate to be $4,249,002. After the court distributed the assets to the parties, it ordered an equalization payment to Ms. Chipman of $999,624, which resulted in a property award to each spouse of $2,124,005. The trial court ordered Mr. Chipman to make a $250,000 lump sum transfer payment and $10,220.16 monthly payments for eight years.

The court noted that "[m]athematical precision is impossible" in the division of property, given all of the circumstances of the case. CP at 550. The court concluded,

> Based on the nature of the community property, the duration of this marriage and the perceived economic circumstances of each spouse upon entry of the decree of dissolution, the court has concluded that the property of the spouses should be divided equally in accord with the matrix attached hereto.

CP at 551.

The court determined that Mr. Chipman "will certainly be capable of selling some of the assets, if necessary, to service his debts." CP at 551. Moreover, the trial court concluded that, as Mr. Chipman testified and the evidence supports, "his worth is measured by his work." CP at 551. The court observed that Mr. Chipman has demonstrated his ability to create business successful opportunities and would likely

continue to do so.

Mr. Chipman moved for reconsideration. He asked the court to reconsider: (1) the community property characterization of the Three Oaks and a Pine asset, (2) a credit to Mr. Chipman for his significant contribution of separate property to the community, (3) deducting the costs of sale and tax consequences of the property awarded to Mr. Chipman, (4) the award of $3,400 to Ms. Chipman for the balance of temporary attorney fees previously awarded, and (5) deducting income received by Ms. Chipman from the couple's businesses and not crediting Mr. Chipman for the community debt he paid down during the pendency of the action. The motion was denied. He now appeals.

DISCUSSION

Trial courts have broad discretion in the distribution of property and liabilities in marriage dissolution proceedings under RCW 26.09.080. Such distribution will be disturbed on appeal only if the trial court manifestly abuses its discretion. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). The party who challenges a decision in a dissolution proceeding must demonstrate that the trial court manifestly abused its discretion. *In re Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). Some of the issues on appeal were also addressed in reconsideration. The trial court's decision on reconsideration is also reviewed for abuse of discretion. *In re Marriage of Treseler*, 145 Wn. App. 278, 291-92, 187 P.3d 773 (2008), *review denied*,

165 Wn.2d 1026 (2009). A manifest abuse of discretion occurs when the court bases its decision on untenable grounds. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

All property, both community and separate, is before the court for distribution in a dissolution. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972). When distributing the property, the court considers, among other factors: (1) the nature and extent of community property, (2) the nature and extent of separate property, (3) the duration of the marriage, and (4) the economic circumstances of the parties. RCW 26.09.080.

The trial court need not divide community property equally if the circumstances warrant such a division. *In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (citing RCW 26.09.080; *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977)). Circumstances may also justify the award of separate property of one spouse to the other. *Id.* (citing RCW 26.09.080; *In re Marriage of Konzen*, 103 Wn.2d 470, 477-78, 693 P.2d 97 (1985)). "[T]he court need only 'make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors.'" *Id.* (quoting RCW 26.09.080).

a. Separate property contributions

Mr. Chipman challenges the court's division of property, claiming the court

improperly failed to consider adjusting the property settlement to give him credit for the separate property he brought into the marriage. "When exercising its discretion, a trial court is permitted to consider, as one relevant factor, a spouse's unusually significant contributions to (or wasting of) the assets on hand at trial." *Id.* at 551.

Mr. Chipman relies on a number of cases, including *In re Marriage of Nuss*, 65 Wn. App. 334, 339-41, 828 P.2d 627 (1992); *White*, 105 Wn. App. at 551-54; *Belmondo v. Belmondo*, 3 Wn. App. 958, 960-61, 480 P.2d 786 (1970); *Wolfisberg v. Wolfisberg*, 51 Wn.2d 103, 107, 316 P.2d 114 (1957); *Murray v. Murray*, 4 Wn. App. 572, 572-73, 483 P.2d 139 (1971); *In re Marriage of Glorfield*, 27 Wn. App. 358, 359, 617 P.2d 1051 (1980).

In each of these cases, the appellate court affirmed the trial court's property distribution, which included some type of adjustment in the property distribution that the court attributed to a spouse's separate property contributions. In no case did the court find an abuse of discretion for not making such an adjustment. But Mr. Chipman asserts that the trial court failed to *consider* a credit. The record does not support his assertion. When addressing this issue on reconsideration, the court stated:

> [Mr. Chipman] did not even try to identify the assets that he claims would continue to be his separate property and he failed to produce any credible evidence that would rebut the presumption that the . . . assets . . . acquired during the parties' marriage are community property. The law does not require the Court to "acknowledge[,]" "compute" or give "credit" for pre-marriage assets unless they have been retained in this separate character or

> they can be sufficiently traced from separate property to current property before the Court. The Court found that the assets had been co-mingled and as such they had become community property.

CP at 566-67.

Mr. Chipman denies that he is challenging the characterization of the property. Instead, he claims that the trial court abused its discretion in making the property distribution by failing to credit his separate property contributions. He has failed to demonstrate that the trial court abused its discretion in its initial decision or on reconsideration.

b. Valuation of property

Mr. Chipman contends that the trial court erred in valuing the Two Pines asset at $800,000. He asserts that the value was based solely on the listing price and now that the FEMA leases were not renewed, as Mr. Chipman predicted, the property is worth, at the most, half of the amount valued by the court.

The valuation of property awarded in marriage dissolution is a material and ultimate fact, which is reviewed for substantial evidence. *In re Marriage of Crosetto*, 101 Wn. App. 89, 96, 1 P.3d 1180 (2000) (material and ultimate fact); *In re Marriage of Eklund*, 143 Wn. App. 207, 212, 177 P.3d 189 (2008) (reviewed for substantial evidence). Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true. *Wenatchee Sportsmen Ass'n v. Chelan*

County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). We will not substitute our judgment for that of the trial court on a disputed factual issue such as the valuation of property. *Worthington v. Worthington*, 73 Wn.2d 759, 762, 440 P.2d 478 (1968).

There was no professional appraisal or market analysis conducted on the property. Mr. Chipman testified that the property was purchased for $135,000 and he thought it cost $150,000 to construct. He testified that his real estate agent told him that the property was worth $575,000 to $625,000. Mr. Chipman thought it was worth anywhere between $600,000 and $700,000. Even with the uncertainty that the FEMA leases would be renewed, Mr. Chipman decided to list it for $800,000. In fact, Mr. Chipman and Ms. Chipman agreed to list the property for $800,000. And Mr. Chipman testified that he hoped to sell the property for $800,000.

Mr. Lemon, the parties' personal and business accountant for over 15 years, valued the property at $600,000, based on information that Mr. Chipman provided to him.

Ms. Chipman based her valuation of the asset on her belief that the asset was worth more than the real estate agent thought it was worth and even with the uncertainty of the continuation of the FEMA leases, Ms. Chipman testified that she thought the asset was worth $800,000.

The trial court's valuation of Two Pines is supported by substantial evidence. The evidence submitted to the court valued the asset anywhere between $575,000 and

$800,000. When parties offer conflicting evidence in valuation of property, a trial court considering a property division may adopt the value asserted by either party or any value in between the two. *In re Marriage of Rockwell*, 141 Wn. App. 235, 250, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008).

Mr. Chipman implies that Ms. Chipman's opinion is not credible and criticizes her for not obtaining a professional appraisal or market analysis on the asset. We note that Mr. Chipman did not obtain an appraisal either. Further, the trial court found that the exact value on any given property was difficult to ascertain.

Mr. Chipman also contends that the court should have considered a value of the Two Pines asset without the FEMA leases. The court was well aware the FEMA leases might not be renewed. It assigned the risk to Mr. Chipman, who, the court had observed, was capable of continuing to engage in profitable ventures, especially when compared to Ms. Chipman's economic circumstances.

Moreover, the erroneous valuation of one particular item does not necessarily require reversal of an otherwise fair and equitable distribution of a sizeable estate. *In re Marriage of Pilant*, 42 Wn. App. 173, 181, 709 P.2d 1241 (1985). The important consideration is whether the overall distribution is fair and equitable. *Id.* The overall distribution was not unfair or inequitable to Mr. Chipman.

c. Costs of sale

Mr. Chipman appeals the trial court's decision not to award costs of sale. Whether to award or deny a deduction for the costs of sale is within the trial court's discretion. *In re Marriage of Stenshoel*, 72 Wn. App. 800, 811, 866 P.2d 635 (1993). The trial court's decision on reconsideration is also reviewed for abuse of discretion. *Treseler*, 145 Wn. App. at 291-92.

The trial court is justified in deducting the costs of sale when "(1) the evidence shows that the party who will receive the assets intends an imminent sale, and (2) the evidence supports the estimated costs of sale." *Stenshoel*, 72 Wn. App. at 810.

Mr. Chipman asserts that the sale of the Two Pines asset was imminent and necessary for him to make a property equalization payment. The trial court recognized that the parties may find it necessary to liquidate assets awarded to them. It also acknowledged that because of the manner in which the parties held their assets, despite the significant amount of assets to be divided "it is impossible to eliminate the impact of this divorce on the financial foundation of each spouse." CP at 550. The court was alluding to the fact that many of the parties' assets are owned by the corporation. Thus, when the asset leaves the corporation, either by transfer or sale, tax consequences follow. Still, the court did not find that any asset needed to be sold in order to make the equalization payment.

In fact, on reconsideration, the trial court held that it "did not find that the sale of

any asset was imminent or necessary." CP at 568. The court recalled Mr. Chipman's proposal that the court order the sale of assets in order to fund an equalization payment to Ms. Chipman, which the court declined to do. This shows the court was mindful of Mr. Chipman's preference for the community to absorb the cost of sale, tax consequences, and risk associated with the market value, but decided to rule otherwise.

The trial court also noted on reconsideration that it was not presented with credible evidence of the tax consequences of a sale. It found that an exhibit purporting to be the listing agreement for the sale of the trailer park was presented, but it did not identify a listing price and expired without a sale. Further, accountant David Lemon prepared a financial statement at the request of Mr. Chipman, which set forth the probable tax consequences and costs of sale for the sale of a number of assets. But, as the court found, the Two Pines asset was not included in the calculations. The trial court found that accountant Jeffrey Neher "commented on the tax consequences of a sale of the trailer park but without specific information, including a sale's price, the amount of the tax would be speculative." CP at 568.

Mr. Chipman also argues that the failure to consider costs of sale is contrary to the trial court's intention that the marital estate be divided "50/50." Appellant's Br. at 18. The trial court concluded, however, that the equal division of property was based on the values in the property matrix. Some of those figures are quite favorable to Mr. Chipman,

such as the $25,000 valuation for Three Oaks and a Pine, LLC.

Mr. Chipman fails to show an abuse of discretion by the trial court in its distribution order or on reconsideration.

d. Distribution of assets

In challenging the distribution of assets, Mr. Chipman essentially rehashes the preceding assignments of error. He also takes issue with the amount of the monthly installment ordered for the equalization payment, claiming it leaves him with insufficient funds upon which to live.

Mr. Chipman does not argue that he lacks the assets to sell to make the equalization payment. Instead, he argues that the amount of the equalization payment requires him to sell the Two Pines asset, which was overvalued, and it was unfair of the court to award it to him without deducting costs of sale when the court knew he would have to sell it. We note that if the property is overvalued, at least Mr. Chipman will enjoy some savings on the costs of sale and tax.

Moreover, as Ms. Chipman points out, since the trial Mr. Chipman has accumulated substantial income from both of the New Orleans trailer parks—before the FEMA leases expired on Two Pines[1] and after the payment from Three Oaks and a

[1] According to Ms. Chipman's calculations based on the materials provided for reconsideration, the full rental income was received by Chipman Construction until FEMA terminated part of the lease (15 of 64 pads) effective March 16, 2008 and the remainder of the lease effective June 1, 2008. This means that Chipman Construction

Pine—which could be applied to the equalization payment.

"The trial court's paramount concern when distributing property in a dissolution action is the economic condition in which the decree leaves the parties." *In re Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338 (1997). Based on the trial court's comments this concern played a role in making its award.

e. Attorney fees on appeal

Citing only RCW 26.09.140, Ms. Chipman seeks attorney fees on appeal. The statute authorizes the superior court and the court on appeal to order one party to pay the reasonable attorney fees of the other, based upon the parties' financial resources.

RAP 18.1 sets forth the procedure in this court for obtaining such an award. RAP 18.1(b) requires argument for such fees in the brief. RAP 18.1(c) requires the filing of an affidavit of financial need at least 10 days before argument.

Mr. Chipman points out that Ms. Chipman has not made an argument or cited to the record. "RAP 18.1(b) requires more than a bald request for attorney fees on appeal. Where there is any issue whatsoever as to a party's entitlement to attorney fees, the failure to argue the issue requires us to deny the request." *Thweatt v. Hommel*, 67 Wn.

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would have received "$51,200 gross for July 2007-March 16, 2008 (8.5 months x $51,200 = $435,200) and then 77% of the amount which reduced the monthly sum to about $39,000 gross until June 1, 2008 (2.5 months x $39,000 = $97,500)." Resp't's Br. at 18. Mr. Chipman does not challenge this calculation.

App. 135, 148, 834 P.2d 1058 (1992). Ms. Chipman's request for attorney fees is therefore denied.

Affirmed. Attorney fees denied.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, C.J.

WE CONCUR:

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Sweeney, J.

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Korsmo, J.